

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,
Plaintiff,

v

CRIMINAL NO. 17-506 (FAB)

JORGE ROBERTO RIVERA-BAEZ,
Defendant.

SENTENCING MEMORANDUM

TO THE HONORABLE COURT:

Jorge Roberto is a drug addict; his drug of choice, heroin. He pled guilty to illegally possessing a machinegun and stands before this Court for sentencing.

Jorge's father has been employed at the ports of Puerto Rico for the past twenty years. He holds a security clearance required for his job. When he learned Jorge Roberto was deep into drugs, he tried to get help for him. However, like many family members of drug addicts, he felt frustrated and impotent when Jorge Roberto failed at his attempts to get clean. Jorge's father had no choice but to leave the household so he could protect his employment. And, so he moved out of his home, leaving his wife, sons and daughters behind.

Jorge Roberto lived with his mother and grandmother. His mother was ill as she suffered many health conditions. Jorge Roberto's addiction to heroin grew and his relationship with his mother and grandmother fostered codependency. According to Jorge's father, his son's mother and grandmother down played his addiction; made up excuses, provided him with money, a home, and food.

Jorge Roberto has two (2) suicide attempts, both after the age of eighteen (18), both attempts by hanging. In both occasions, Jorge was found and others intervened. In 2014, Jorge Roberto was

hospitalized in a mental health facility, Hospital San Juan Capestrano. He was diagnosed with bipolar disorder and cannabis dependency. He received treatment for a week and was released. He did not receive any further treatment until 2017, when he voluntarily entered substance abuse treatment at Edras 2:10 in Orocovis. After a few days, he left and kept on using. A week before he was arrested for the instant offense, his mother died of health complications.

Jorge Roberto left school when he reached the 10th grade but was able to complete his GED from the Department of Education of Puerto Rico. He began courses in electricity at Instituto de Banca but did not complete it. As to employment, Jorge worked along his father at the ports of San Juan for approximately three (3) months. He also worked washing cars and constructions. While incarcerated he has been working cleaning bathrooms at the Miami FCI.

Jorge Roberto's drug addiction led him astray of the law-abiding life shown to him by to him his father and mother. According to the National Institute on Drug Abuse (NIDA) those who are mentally ill are more likely to abuse drugs and/or alcohol. According to SAMHSA, 26.7% of people with mental health issues abused illicit drugs in 2012. This contrasts heavily with the general public, where only 13.2% of the people abused drugs. Those who suffer from mental illness may attempt to self-medicate their symptoms via drug use. Paradoxically, when the patient is not high, the symptoms of their mental health issue return –oftentimes times stronger than before.¹

Of particular importance in this case, this Court should note that according to the National Institute of Mental Health, bipolar disorder is a brain disorder that causes unusual shifts in mood, energy, activity levels, and the ability to carry out day-to-day tasks. Bipolar disorder symptoms can result in damaged relationships, poor job or school performance, and even suicide. Bipolar disorder

¹ Patterson, Eric. Mental Health and Drug Abuse. <https://drugabuse.com/library/mental-health-and-drug-abuse/>

tends to run in families.

Children with a parent or sibling who has bipolar disorder are much more likely to develop the illness, compared with children who do not have a family history of bipolar disorder. But genes are not the only risk factor for bipolar disorder. Research suggests that factors besides genes are also at work. Some imaging studies found that the brain's prefrontal cortex in adults with bipolar disorder tends to be smaller and function less compared to adults who don't have bipolar disorder. The prefrontal cortex is a brain structure involved in "executive" functions such as solving problems and making decisions. This structure and its connections to other parts of the brain mature during adolescence, suggesting that abnormal development of this brain circuit may account for why the disorder tends to emerge during a person's teen years. People with bipolar disorder may also abuse alcohol or substances, have relationship problems, or perform poorly in school or at work. It may be difficult to recognize these problems as signs of a major mental illness. As recognized by Jorge Roberto, he started abusing marijuana at age eighteen. By the time of his arrest, he had graduated to hardcore drugs such as cocaine, pills and heroin.

Bipolar disorder cannot be cured, but it can be treated effectively over the long term. Proper treatment helps many people with bipolar disorder—even those with the most severe forms of the illness—gain better control of their mood swings and related symptoms. But because it is a lifelong illness, long-term, continuous treatment is needed to control symptoms. Treatment is more effective if you work closely with a doctor; an effective maintenance treatment plan usually includes a combination of medication and psychotherapy.

It goes without saying that Jorge Roberto's current legal situation impedes him from making any long term plans, for he must first face the hardest punishment, being kept away from his family and away from the mental health treatment he desperately needs.

Undoubtedly, Jorge Roberto has the skills and the ability to make himself as useful and as

marketable as possible in the future. He wants to receive mental health treatment, substance abuse treatment and finish his studies in electricity. The potential for rehabilitation is one that a district court can take into account in making a sentencing determination. *Cf., United States v. Beach*, 275 Fed. Appx. 529, 532 (6th Cir. 2008) (“prospects for rehabilitation” are an appropriate consideration for sentencing); *United States v. Autery*, 555 F.3d 864, 876-877 (9th Cir. 2009) (same).

We ask this Honorable Court note Christian’s family is particularly supportive. His father, mother, sister and brother have all stepped up in support of him. Despite the pain and complicated history, the respect they have for each other has never wavered, nor have they ever fallen out of contact– with each other or with the undersigned. *United States v.*

Puche, 282 Fed. Appx. 795, 797 (11th Cir. 2008) (“strong support system of family and friends” militated toward lower sentence).

Jorge Roberto is a human being, with a complex mental health disorder, presently struggling and succeeding in overcoming past failures. Jorge cannot change the crime he has committed; he can only accept responsibility for it. He cannot alter his past conduct; he can only commit him wholeheartedly to turn away from it. Undeniably, he already has.

Thus, this Honorable Court is urged to take Jorge Roberto’s personal attributes and circumstances into account and sentence him to thirty (30) months imprisonment, the upper end of the applicable guidelines.²

I HEREBY CERTIFY that on this date I electronically filed the foregoing motion with the Clerk of

² The Amended Presentence Report states that Mr. Rivera-Baez is to receive a total base offense level of 18, receiving only two (2) points for acceptance of responsibility. The undersigned contacted AUSA Omar Barroso about the third point of acceptance under USSG 3E.1 (b). According to AUSA Barroso, Mr. Rivera-Baez should get this third point reduction because he pled guilty in a timely manner. He informed us he contact USPO Villeta about this third point of acceptance of responsibility. If the PSR is amended to include a third point of acceptance, Mr. Rivera-Baez’s total offense level will yield 17 points for a guideline imprisonment range of 24 to 30 months under Criminal History Category I. At the time this Sentencing Memorandum was filed, no amended report regarding this third point for acceptance has been filed.

the Court using the CM/ECF system which will send notification of such filing to the parties of record.

In San Juan, Puerto Rico, on the 14th day of May 2018.

**ERIC A. VOS, ESQ.
Federal Public Defender
District of Puerto Rico**

s/Isabelle C. Oria-Calaf
**ISABELLE C. ORIA-CALAF
USDC-PR 226905
A.F.P.D. for Defendant
241 Franklin D. Roosevelt Avenue
Hato Rey, PR 00918-2441
Tel. (787) 281-4922 / Fax (787) 281-4899
E-mail : Isabelle_Oria@fp.org**